

Dev Gnandev, M.D., Vice Chair  
Panel B

**BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

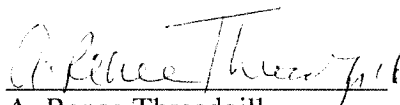
In the Matter of the Accusation and Petition to	)	
Revoke Probation Against:	)	
	)	MBC No. D1-2004-161866
<b>MARYANNE PHILLIPS, M.D.</b>	)	
	)	OAH No. 2012060101
	)	
Physician's & Surgeon's	)	<b>ORDER GRANTING STAY</b>
Certificate No. A-63753	)	
	)	(Gov't Code Section 11521)
	)	
_____ Respondent	)	

**Maryanne Phillips, M.D.**, has filed a Request for Stay of execution of the Decision in this matter with an effective date of August 16, 2013.

Execution is stayed until **August 26, 2013**.

This stay is granted solely for the purpose of allowing the Board time to review and consider the Petition for Reconsideration.

DATED: August 15, 2013

  
A. Renee Threadgill  
Chief of Enforcement  
Medical Board of California

**BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

<b>In the Matter of the Accusation and)</b>	)	
<b>Petition to Revoke Probation</b>	)	
<b>Against:</b>	)	
	)	
<b>MARYANNE PHILLIPS, M.D.</b>	)	<b>Case No. D1-2004-161866</b>
	)	
<b>Physician's and Surgeon's</b>	)	<b>OAH No. 2012060101</b>
<b>Certificate No. A-63753</b>	)	
	)	
<b>Respondent.</b>	)	
_____	)	

**ORDER CORRECTING DECISION**

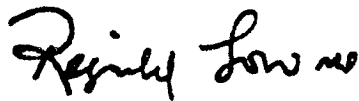
The Proposed Decision of Roy W. Hewitt, Administrative Law Judge, dated June 26, 2013 is attached hereto. Said decision is hereby amended, pursuant to Government Code section 11518.5(d), to correct technical or minor changes that do not affect the factual or legal basis of the proposed decision. The proposed decision is amended as follows:

1. Page 9, Physician's and Surgeon's Certificate No. A-89141 is stricken and replaced with Physician's and Surgeon's Certificate No. A-63753.

**IT IS HEREBY ORDERED** that the Physician's and Surgeon's Certificate No. on page 9, under the Order in the above-entitled matter be and hereby amended and corrected nunc pro tunc as of the date of entry.

**IT IS SO ORDERED July 30, 2013.**

**MEDICAL BOARD OF CALIFORNIA**

  
By: \_\_\_\_\_  
Reginald Low, M.D., Chair  
Panel B

**BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

**In the Matter of the Accusation and)  
Petition to Revoke Probation        )  
Against:                                        )**

**MARYANNE PHILLIPS, M.D.                )**

**Case No. D1-2004-161866**

**Physician's and Surgeon's                )  
Certificate No. A-63753                        )**

**OAH No. 2012060101**

**Respondent.                                        )  
\_\_\_\_\_ )**

**DECISION**

The Proposed Decision of Roy W. Hewitt, Administrative Law Judge, dated June 26, 2013 is attached hereto. Said decision is hereby amended, pursuant to Government Code section 11517(c)(2)(C), to correct technical or minor changes that do not affect the factual or legal basis of the proposed decision. The proposed decision is amended as follows:

1. Page 1, Case No. 19-2010-211768 is stricken and replaced with Case No. D1-2004-161866.

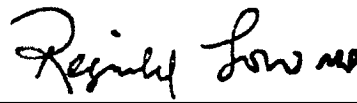
The Proposed Decision as amended is hereby accepted and adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on August 16, 2013.

IT IS SO ORDERED July 17, 2013.

**MEDICAL BOARD OF CALIFORNIA**

By: \_\_\_\_\_



**Reginald Low, M.D., Chair  
Panel B**

BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation and Petition to  
Revoke Probation Against:

MARYANNE PHILLIPS, M.D.

Physician's and Surgeon's  
Certificate No. A 63753,

Respondent.

Case No. 19-2010-211768

OAH No. 2012060101

**PROPOSED DECISION**

This matter came on regularly for hearing before Roy W. Hewitt, Administrative Law Judge (ALJ), Office of Administrative Hearings, in San Diego, California on June 3, 2013.

Deputy Attorney General Samuel K. Hammond represented complainant.

Maryanne Phillips, M.D. (respondent) represented herself.

**MOTION TO CONTINUE TO OBTAIN COUNSEL**

In her Notice of Defense respondent indicated she was represented in this action by Jess R. Marchese, Esq., a Nevada attorney. On the first day of hearing respondent notified the ALJ that she was being represented by Eric Chase, Esq., a California attorney, and that Mr. Chase had been hospitalized on Thursday, May 30, 2013, with the flu and was still ill and could not, therefore, represent her unless the matter was continued to a time when her attorney regained his health. The ALJ directed respondent to contact Mr. Chase's office to determine his current status and to further obtain an estimate as to when he would be available to represent respondent. The ALJ recessed the hearing so that respondent could make telephonic contact with Mr. Chase's office. After reconvening, respondent informed the ALJ that she could not get in contact with Mr. Chase; however, one of the witnesses, respondent's probation monitor, who was present to testify during the hearing, informed the ALJ that she was successful in contacting Mr. Chase during the recess and that Mr. Chase indicated to her that he was not sick and that he was not retained to represent respondent in the instant proceedings. Respondent's

probation monitor provided the ALJ with Mr. Chase's telephone number and the ALJ, in the presence of the parties, called Mr. Chase. Mr. Chase stated that he had never been retained to represent respondent during the instant hearing. Mr. Chase further stated that although he had been sick the week before the hearing, he was not currently ill. After the telephone conversation with Mr. Chase respondent attempted to clarify her position by telling the ALJ that she believed her Nevada attorney had hired Mr. Chase to represent her in these proceedings. Respondent's attempt to explain herself was unpersuasive. The ALJ concluded that respondent attempted to mislead the court by telling half-truths and the continuance motion was denied.

Oral and documentary evidence was received and the matter was submitted on June 3, 2013.

### FACTUAL FINDINGS

1. The Accusation and Petition to Revoke Probation against respondent was filed by Linda K. Whitney (complainant), while acting in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs, State of California (the Board).

2. On October 24, 1997, the Board issued respondent Physician's and Surgeon's Certificate No. A 63753.

#### *Prior California Discipline*

3. On August 21, 2006, David T. Thornton, then Executive Director of the Board, filed an accusation against respondent in Case number 09-2004-161866. The accusation alleged that respondent committed acts of gross negligence, repeated negligent acts, incompetence, violations of drug statutes, excessive prescribing, prescribing to an addict, prescribing without a good faith examination and in the absence of medical indication, and failed to maintain accurate records during her care and treatment of two patients.

4. On December 2, 2008, respondent signed a Stipulated Settlement and Disciplinary Order in Case number 09-2004-161866. In the Stipulated Settlement respondent admitted that complainant "could establish a *prima facie* case with respect to the charges and allegations contained in Accusation No. 09-2004-1618666, and that she has thereby subjected her Physician's and Surgeon's Certificate No. A 63753 to disciplinary action." (Exh. 8)

5. Effective April 6, 2009, respondent's certificate was revoked, the revocation was stayed and respondent was placed on probation for three years on certain terms and conditions, including: obey all laws and rules; submission of quarterly reports; and, comply with the Board's probation unit.

*2009 Nevada State Board of Medical Examiners' Complaint Against Respondent and the Resulting Discipline*

6. After the April 6, 2009, discipline in California respondent moved to Nevada where she had been licensed since December 21, 1995. On May 8, 2009, respondent renewed her license with the Nevada State Board of Medical Examiners (Nevada Board). Question number 9 on the renewal application asked “[h]ave you had a medical license or license to practice any other healing art revoked, suspended, limited, or restricted in any state, country or U.S. territory?” Respondent falsely answered Question 9 in the negative.

7. On December 23, 2009, the Nevada Board filed a complaint against respondent alleging that respondent was subject to discipline because she obtained her renewed license to practice medicine by “misrepresentation or by [a] false, misleading, inaccurate or incomplete statement. . . .” (Exh. 14)

8. In January 2011, respondent entered into a settlement agreement with the Nevada Board. Pursuant to that agreement respondent received a public reprimand, her license was revoked, the revocation was stayed and respondent was placed on probation until April 6, 2012.

*2010 Nevada State Board of Pharmacy Accusation Against Respondent and the Resulting Discipline*

9. On December 8, 2010, the Nevada State Board of Pharmacy filed an accusation against respondent based, in part, on an allegation that respondent’s November 17, 2010, application for renewal of her controlled substance registration contained false information. In pertinent part, the accusation alleged the following:

On the renewal notice there are three questions that Respondent had to answer:

Since your last renewal or recent licensure have you:

1. Been charged, arrested or convicted of a felony or misdemeanor in any state?
2. Been the subject of an administrative action whether completed or pending in any state?
3. Had your license subjected to any discipline for violation of pharmacy or drug laws in any state?

To the first question Respondent Phillips answered, ‘no.’  
To the second question Respondent Phillips answered ‘yes’ and

‘no’ and then wrote, ‘Not since last renewal.’ To the third question Respondent Phillips answered ‘no.’ In the administrative action section of the renewal application Respondent Phillips wrote, ‘CA’ and in the criminal action section she wrote ‘none.’

¶ . . . ¶

On April 6, 2009, Respondent Phillips entered into a Stipulated Settlement and Disciplinary Order, File No. 09-2004-161866, with the Medical Board of California. On December 21, 2009, Respondent Phillips entered into an Agreed Order with the New Mexico Medical Board. On December 23, 2009, the Nevada Board of Medical Examiners filed a formal complaint against Respondent Phillips that is still pending. None of these administrative actions were disclosed by Respondent Phillips as is required by the renewal application. (Exh. 18)

10. In a February 2, 2011, Stipulation and Order by the Nevada State Board of Pharmacy respondent admitted that she provided false information on her renewal application by failing to disclose the administrative actions taken against her and the administrative action that was still pending against her. As a result of the stipulated settlement respondent’s Controlled Substance Registration and DEA Registration were cancelled, effective March 1, 2011; however, respondent was allowed to apply for a new controlled substance registration reflecting her disciplinary actions. That registration was revoked, the revocation was stayed and respondent was placed on probation until February 2, 2013 (Exh. 18)

#### *New Mexico Medical Board Actions Against Respondent*

11. Based on the April 6, 2009, California discipline, the New Mexico Board issued an “Agreed Order.” The Order, which respondent signed on November 18, 2009, placed respondent on probation in New Mexico “until she has successfully completed the terms and conditions set forth in the California Medical Board Order and her license has been fully restored in that state.” (Exh. 21) One of the conditions of the New Mexico probation order was that respondent “will provide quarterly affidavits to the Board attesting to her compliance with the terms set forth in this Agreed Order.”

12. On August 26, 2011, the New Mexico Board filed a Notice of Contemplated Action (an Accusation) against respondent. On September 2, 2011, the New Mexico Board amended the Accusation. The Amended Accusation alleged the following:

A. In December 2009 the Board approved an Agreed Order with Respondent which provided, in part, that Respondent



would provide quarterly affidavits to the Board attesting to her compliance with the terms set forth in the Agreed Order. To date, Respondent has submitted none of the affidavits required by the Agreed Order. . .

B. In January 2011, Respondent entered into a Settlement Agreement with the Nevada Board of Medical Examiners pursuant to which she was, among other things, to receive a public reprimand and be placed on probation. . . . Respondent failed to inform the Board of the action by the Nevada Board. (Exh. 22)

13. Respondent failed to provide a defense to the allegations of the Accusation so, on November 10, 2011, the New Mexico Board issued a Default Decision and Order revoking respondent's New Mexico license to practice medicine. (Exh. 22)

*2011 Nevada Board, Investigative Committee's, Complaint Against Respondent and the Resulting Discipline*

14. On January 28, 2011, the Investigative Committee filed a Complaint against respondent charging her with engaging in conduct that is grounds for discipline pursuant to the Nevada Medical Practice Act. The Complaint charged respondent as follows:

One count of engaging in conduct intended to deceive . . . . One count of violating a regulation adopted by the State Board of Pharmacy . . . . One count of prescribing a controlled substance except as authorized by law. . . and one count of failure to maintain timely, legible, accurate and completed medical records related to the diagnosis, treatment and care of [a patient]. . . (Exh. 29)

15. On April 17, 2012, respondent signed a "Settlement, Waiver and Consent Agreement" in the Nevada matter.

16. As a result of the Settlement/Consent Agreement respondent's license was revoked, the revocation was stayed, respondent was issued a public letter of reprimand and was placed on thirty-six (36) months of probation. The Public Letter of Reprimand summarized the disciplinary action as follows:

In Accordance with its acceptance of the Agreement, the Board has entered an Order finding that you engaged in conduct intended to deceive . . . and that you failed to maintain timely, legible, accurate and complete medical records related to the diagnosis, treatment and care of a patient. . . . The Order calls

for your license to be revoked and that the revocation be stayed and that you be placed on thirty-six (36) months probation . . . . (Exh. 29)

*Respondent's Lack of Compliance With the Terms and Conditions of Her California Probation*

17. Probation condition number 8 of the Board's Decision and Order in Case No. 09-2004-161866 required that "Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation. . . ." (Exh. 8).

18. The Quarterly Declarations signed and submitted by respondent contained the following oath:

I hereby submit this Quarterly Declaration as required by the Medical Board of California and its Order of probation thereof and declare under penalty of perjury under the laws of the State of California that I have read the foregoing declaration and any attachments in their entirety and know their contents and that all statements made are true in every respect and I understand and acknowledge that any misstatements, misrepresentations, or omissions of material fact may be cause for further disciplinary actions. (Exh. 5)

19. Question number 10 the Quarterly Reports submitted by respondent asks: "Have you been denied, had a license or certificate to practice a business or profession suspended, revoked, or surrendered or otherwise disciplined by any other federal , state, government agency or other country?" Question number 10 is followed by two boxes; one box labeled "yes\*" with an asterisk, and one box labeled "no." In bold print beneath the questions section of the application is the following explanation of the asterisk attached to the number 10 question's "yes" answer: **"\*IF YOU ANSWERED YES, to the above question numbers 1 through 10 . . . , you must explain in detail, on an attached sheet of paper."** (Exh. 5, emphasis in original) Therefore, if respondent checked the "yes" box she was required to provide a detailed explanation.

20. On March 30, 2011, respondent failed to check either the "yes" or "no" boxes in response to Question 10. Following Question 10, respondent wrote "reciprocal probation-New Mexico and Nevada." The information provided by respondent was false, misleading, and was not "true in every respect." Respondent failed to check the "yes" box and disclose the following disciplines: on February 2, 2011, the Nevada State Board of Pharmacy disciplined her DEA Registration and Nevada Controlled Substance Registration by placing her Nevada Controlled Substances Registration on probation for two years; and the Nevada Board imposed disciplinary action on her Nevada medical license by publicly reprimanding

her and placing her Nevada Medical License on probation. Furthermore, respondent failed to “explain in detail” that the Nevada Pharmacy and Medical Boards imposed the discipline(s) based on the fact that respondent provided false information in her renewal applications. (Exh.5, AGO 0082) They were not “reciprocal” disciplines, she was disciplined in those states for her acts of dishonesty when completing those states’ renewal applications. This conduct violated condition 8 of respondent’s California probation.

21. On July 10, 2011, respondent again failed to check either the “yes” or “no” boxes in response to question 10. Near the “yes” and “no” boxes respondent wrote: “recently renewed Nevada Lic” (Exh. 5, AGO 0085) Again, respondent failed to disclose her Nevada disciplines and failed to provide a “detailed explanation” of the Nevada disciplines. Again, respondent violated condition 8 of her California probation.

*Respondent’s Testimony Concerning Her Failure to Comply With Condition Number 8 of Her California Probation*

22. In essence, respondent testified that although she did not check the “yes” or “no” box on her March 30, 2011 and July 10, 2011, California quarterly reports she did write information on the quarterly reports that should have alerted her probation monitor to the Nevada and New Mexico disciplinary actions. As previously noted, on the March 30, 2011, quarterly report respondent noted “reciprocal probation-New Mexico and Nevada,” however, this statement was not accurate. Respondent’s disciplinary actions in Nevada and New Mexico were not “reciprocal probations” based on respondent’s California discipline. Rather, the Nevada and New Mexico actions were based on false information respondent provided on her applications and her failure to disclose the Nevada actions to the New Mexico Board. On respondent’s July 10, 2011, quarterly report, respondent wrote “recently renewed Nevada Lic.” However, respondent conveniently left out the fact that as a result of a Settlement/Consent Agreement respondent’s license was revoked, the revocation was stayed, respondent was issued a public letter of reprimand and was placed on thirty-six (36) months of probation.

23. Respondent’s testimony merely served to highlight the fact that she plays fast and loose with the truth. Respondent engages in half-truths and slight of tongue to obfuscate the truth. In other words, respondent, by her own statements during the hearing, both during the motion phase of the hearing and during the substantive phase of the hearing, proved to be a consummate liar.

*Respondent’s Testimony Concerning the Nevada and New Mexico Disciplinary Actions*

24. During her testimony respondent attempted to explain how she was railroaded in the Nevada and New Mexico disciplinary proceedings. According to respondent she was represented by several attorneys during the course of the Nevada and New Mexico proceedings and the attorneys were inept. For example, one of the attorneys did not hire a hand-writing expert to examine the prescriptions/scripts that formed the basis of some of the

improper prescribing allegations respondent faced. It was explained to respondent during the hearing that she was bound by the findings and the discipline imposed by Nevada and New Mexico and could not collaterally attack those determinations in this action. (See *Arneson v. Fox* (1980) 28 Cal.3d 440, 449.)

25. Based on respondent's equivocations and misrepresentations to the court in the present action, and her seeming inability to distinguish truth from fiction, respondent's testimony was completely discounted.

## LEGAL CONCLUSIONS

1. California Business and Professions Code section 2303 provides:

The revocation, suspension, or other discipline, restriction, or limitation imposed by another state upon a license or certificate to practice medicine issued by that state, or the revocation, suspension, or restriction of the authority to practice medicine by any agency of the federal government, that would have been grounds for discipline in California of a licensee under this chapter, shall constitute grounds for disciplinary action for unprofessional conduct against the licensee of this state.

2. California Business and Professions Code section 2261 provides that the following constitutes unprofessional conduct in California: "Knowingly making or signing any certificate or other document directly or indirectly related to the practice of medicine or podiatry which falsely represents the existence or nonexistence of a state of facts."

3. Causes for discipline exist pursuant to California Business and Professions Code sections 2305 and 2261 for each individual instance which formed the bases for respondent's Nevada Medical Board, Nevada Pharmacy Board and New Mexico Medical Board disciplines.

4. Causes for discipline exist pursuant to California Business and Professions Code section 2305 for each of respondent's false answers on her March 30, 2011, and July 10, 2011, California quarterly probation reports.

5. Causes for revocation of respondent's probation exist based on respondent's failure to comport with condition 8 of her probation.

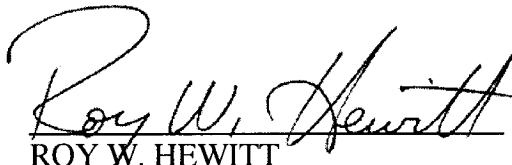
6. The grant of probation by a regulatory agency is an act of grace. One who is placed on probation should strictly adhere to the terms and conditions of the probation and not play fast and loose with the conditions. Respondent's conduct in California, Nevada and New Mexico, when viewed individually and cumulatively reveal that respondent did not appreciate the act of grace that was bestowed upon her by any of the jurisdictions. Instead of being

thankful for the chance to prove herself, respondent abused the privilege of being placed on probation and her abuses of probation provided evidence that she cannot be trusted to adhere to terms and conditions designed to ensure public protection. Consequently, the only action appropriate to protect the public is to revoke respondent's probation and, based on the revocation and the other independent bases for discipline, order the outright revocation of respondent's certificate to practice medicine in the state of California.

#### ORDER

Respondent Maryanne Phillips's California Physician's and Surgeon's Certificate No. A 89141 and all rights appurtenant thereto is/are revoked.

Dated: June 26, 2013.

  
ROY W. HEWITT  
Administrative Law Judge  
Office of Administrative Hearings

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FILED  
STATE OF CALIFORNIA  
MEDICAL BOARD OF CALIFORNIA  
SACRAMENTO July 17 2012  
BY H. Park ANALYST

9  
10 **BEFORE THE**  
**MEDICAL BOARD OF CALIFORNIA**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the First Amended Accusation  
and Petition to Revoke Probation Against:

Case No. D1-2004-161866/19-2010-211768

13 **MARYANNE PHILLIPS, M.D.**  
14 **10620 Southern Highland Parkway,**  
**Suite 110-250**  
15 **Las Vegas, NV 89141**

**FIRST AMENDED ACCUSATION AND  
PETITION TO REVOKE PROBATION**

16 **Physician's and Surgeon's**  
17 **Certificate No. A 63753**

18 Respondent.

19  
20 Complainant alleges:

21 **PARTIES**

22 1. Linda K. Whitney (Complainant) brings this First Amended Accusation and  
23 Petition to Revoke Probation solely in her official capacity as the Executive Director of the  
24 Medical Board of California.

25 2. On or about October 24, 1997, the Medical Board of California (Board) issued  
26 Physician's and Surgeon's Certificate Number A63753 to Maryanne Phillips, M.D. (Respondent).  
27 The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the  
28 charges brought herein and will expire on September 30, 2013, unless renewed.

1 **PRIOR DISCIPLINARY ACTION**

2 3. On March 5, 2009, in a case entitled "In the Matter of the Accusation Against:  
3 Maryanne Phillips, M.D.," Case No. 09-2004-161866, the Board ordered respondent's  
4 Physician's and Surgeon's Certificate revoked, stayed the revocation, and placed respondent on  
5 probation for three (3) years on terms and conditions that included, among other things,  
6 requirements respondent complete the Prescribing Practices Course, Medical Record Keeping  
7 Course, Ethics Course and the PACE Clinical Training Program.

8 **JURISDICTION**

9 4. This First Amended Accusation and Petition to Revoke Probation, which  
10 supersedes the original Accusation and Petition to Revoke Probation filed in Case No. D1-2004-  
11 161866/19-2010-211768, is brought before the Board, under the authority of the following laws,  
12 and under the Decision issued "In the Matter of the Accusation Against Maryanne Phillips,  
13 M.D.," Case No. 09-2004-161866. All section references are to the Business and Professions  
14 Code unless otherwise indicated.

15 5. Section 2227 of the Code provides that a licensee who is found guilty under the  
16 Medical Practice Act may have his or her license revoked, suspended for a period not to exceed  
17 one year, placed on probation and required to pay the costs of probation monitoring, be publicly  
18 reprimanded, or have such other action taken in relation to discipline as the Board deems proper.

19 6. Section 2234 of the Code states:

20 "The Division of Medical Quality<sup>1</sup> shall take action against any licensee who is

21 ///

22 ///

23 ///

24  
25 \_\_\_\_\_  
26 <sup>1</sup> California Business and Professions Code section 2002, as amended and effective  
27 January 1, 2008, provides that, unless otherwise expressly provided, the term "board" as used in  
28 the State Medical Practice Act (Cal. Bus. & Prof. Code, §§ 2000, et seq.) means the "Medical  
Board of California," and references to the "Division of Medical Quality" and "Division of  
Licensing" in the Act or any other provision of law shall be deemed to refer to the Board.

1 charged with unprofessional conduct.<sup>2</sup> In addition to other provisions of this article,  
2 unprofessional conduct includes, but is not limited to, the following:

3 "(a) Violating or attempting to violate, directly or indirectly, assisting in or  
4 abetting the violation of, or conspiring to violate any provision of this chapter  
5 [Chapter 5, the Medical Practice Act].

6 "(b) Gross negligence.

7 "(c) Repeated negligent acts. To be repeated, there must be two or more  
8 negligent acts or omissions. An initial negligent act or omission followed by a  
9 separate and distinct departure from the applicable standard of care shall constitute  
10 repeated negligent acts.

11 "(1) An initial negligent diagnosis followed by an act or omission medically  
12 appropriate for that negligent diagnosis of the patient shall constitute a single  
13 negligent act.

14 "(2) When the standard of care requires a change in the diagnosis, act, or  
15 omission that constitutes the negligent act described in paragraph (1), including, but  
16 not limited to, a reevaluation of the diagnosis or a change in treatment, and the  
17 licensee's conduct departs from the applicable standard of care, each departure  
18 constitutes a separate and distinct breach of the standard of care.

19 "(d) Incompetence.

20 "(e) The commission of any act involving dishonesty or corruption which is  
21 substantially related to the qualifications, functions, or duties of a physician and  
22 surgeon.

23 "(f) Any action or conduct which would have warranted the denial of a certificate."

24 ///

25  
26 <sup>2</sup> Unprofessional conduct is conduct which breaches the rules or ethical code of the  
27 medical profession, or conduct which is unbecoming a member in good standing of the medical  
28 profession, and which demonstrates an unfitness to practice medicine. (*Shea v. Board of Medical  
Examiners* (1978) 81 Cal.App.3d, 564, 575.)



7. Section 2266 of the Code states:

“The failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct.”

8. Section 2261 of the Code states:

“Knowingly making or signing any certificate or other document directly or indirectly related to the practice of medicine or podiatry which falsely represents the existence or nonexistence of a state of facts, constitutes unprofessional conduct.”

9. Section 2262 of the Code states:

“Altering or modifying the medical record of any person, with fraudulent intent, or creating any false medical record, with fraudulent intent, constitutes unprofessional conduct.

“In addition to any other disciplinary action, the Division of Medical Quality or the California Board of Podiatric Medicine may impose a civil penalty of five hundred dollars (\$500) for a violation of this section.”

10. Section 2305 of the Code states:

“The revocation, suspension, or other discipline, restriction, or limitation imposed by another state upon a license or certificate to practice medicine issued by that state, or the revocation, suspension, or restriction of the authority to practice medicine by any agency of the federal government, that would have been grounds for discipline in California of a licensee under this chapter, shall constitute grounds for disciplinary action for unprofessional conduct against the licensee of this state.”

### FIRST CAUSE FOR DISCIPLINE

(Discipline, Restriction or Limitation Imposed by Another State)

11. Respondent is subject to disciplinary action under sections 2227 and 2234, as defined in section 2305 of the Code, in that licensing agencies in other states have imposed discipline, restrictions or limitations on respondent's medical licenses or certificates in those states. The circumstances are as follows:

///

1 **Controlled Substances Registration – Nevada State Board of Pharmacy**

2 A. On or about February 2, 2011, the Nevada State Board of Pharmacy cancelled  
3 respondent's Nevada Controlled Substances Registration No. CS08110 and DEA Registration  
4 No. BP7565863. However, respondent was permitted to apply for a new Nevada Controlled  
5 Substances Registration which was immediately revoked, but the revocation was stayed and the  
6 Controlled Substances Registration was placed on two (2) years probation under certain terms and  
7 conditions.

8 B. The circumstances of the Nevada State Board of Pharmacy's disciplinary action  
9 are as follows: On or about October 16, 2010, respondent completed and signed an application  
10 for renewal of her Controlled Substances Registration to the Nevada State Board of Pharmacy.  
11 Respondent signed the application for renewal form (application) under penalty of perjury that all  
12 statements in the application are true and correct. Respondent submitted the application to the  
13 Nevada State Board of Pharmacy on or about November 17, 2010. The application required  
14 respondent to provide answers to three (3) questions. Question No. 2 of Section 1 of the  
15 application provided: "Since your last renewal<sup>3</sup> or recent licensure, have you:  
16 Been the subject of an administrative action whether completed or pending in any state."  
17 Respondent answered "Yes" and "No," to this question and then wrote: "Not since last renewal."  
18 The application also requested additional information and documentation if the answer to any of  
19 the three questions was "Yes." Under this section respondent wrote "CA" with no additional  
20 information.

21 C. Respondent provided false answers to the questions in the application for  
22 renewal of her Controlled Substance Registration to the Nevada State Board of Pharmacy in that,  
23 she failed to disclose that: (1) In a Settlement and Disciplinary Order effective April 6, 2009,  
24 respondent's California Physician's and Surgeon's certificate was revoked, the revocation was  
25 stayed, and the Physician's and Surgeon's Certificate was placed on three (3) years probation; (2)  
26 On or about November 18, 2009, respondent entered into an Agreed Order with the New Mexico

27 \_\_\_\_\_  
28 <sup>3</sup> Emphasis in original.

1 Medical Board in which her New Mexico Medical License was placed on probation based on  
2 certain terms and conditions; and (3) On or about December 23, 2009, the Nevada Board of  
3 Medical Examiners filed a complaint against respondent charging respondent with, among other  
4 things, engaging in misrepresentation and providing false and misleading statements on an  
5 application form for renewal of her medical license.

6 D. On or about December 8, 2010, the Nevada State Board of Pharmacy filed a  
7 Notice of Intended Action and Accusation No. 10-086-CS-S against respondent alleging, among  
8 other things, that respondent failed to disclose administrative actions taken against respondent's  
9 medical licenses by other states in her application for renewal of her controlled substances  
10 registration. On or about January 11, 2011, at a hearing before the Nevada State Board of  
11 Pharmacy, respondent pled guilty to the charge of failure to disclose administrative actions taken  
12 against respondent's medical licenses by other states in her application for renewal of her  
13 controlled substances registration.

14 **Disciplinary Action – Nevada Board of Medical Examiners: Case No. 09-10032-1**

15 E. On or about January 7, 2011, respondent entered into an Agreed Order with the  
16 Nevada Board of Medical Examiners in which respondent pled guilty to engaging in  
17 misrepresentation and providing false and misleading statements in connection with her  
18 application for renewal of the Nevada Medical License. The Agreed Order publicly reprimanded  
19 respondent, and her Nevada Medical License was revoked but the revocation stayed, and the  
20 medical license was placed on probation until April 6, 2012, based on certain terms and  
21 conditions.

22 F. The circumstances of the Nevada Board of Medical Examiners' disciplinary  
23 action are as follows: Some time prior to May 8, 2009, respondent submitted an application for  
24 renewal of her Nevada Medical License to the Nevada State Board of Medical Examiners.  
25 Respondent's Nevada Medical License was renewed on or about May 8, 2009. Question 9 of the  
26 renewal application form asked: "[h]ave you had a medical license or license to practice any other  
27 healing art revoked, suspended, limited, or restricted in any state, country, or U.S. territory?"  
28 Respondent responded "No." This response is false because, in truth and in fact, respondent's

1 California Physician's and Surgeon's Certificate was revoked but the revocation was stayed and  
2 the Physician's and Surgeon's Certificate was placed on probation in a Board's Decision effective  
3 April 6, 2009.

4 G. On or about December 23, 2009, the Investigative Committee of the Nevada  
5 State Board of Medical Examiners filed a Complaint in Case No. 09-10032-1 against respondent,  
6 charging respondent with among other things, engaging in misrepresentation and providing false  
7 and misleading statements for the purpose of obtaining a renewed license in violation of section  
8 630.304(1) of the Nevada Revised Statute.

9 **Disciplinary Action – Nevada Board of Medical Examiners: Case No. 11-10032-1**

10 H. On or about April 16, 2012, respondent signed a Settlement, Waiver and  
11 Consent Agreement (Consent Agreement) with the Investigative Committee of the Nevada Board  
12 of Medical Examiners in which respondent pled guilty to engaging in conduct intended to deceive  
13 (Count 1) and failing to maintain timely, legible, accurate and complete medical records related to  
14 the diagnosis, treatment and care of a patient (Count IV). On or about June 8, 2012, the Nevada  
15 State Board of Medical Examiners adopted the Consent Agreement as its Decision and Order in  
16 Case No. 11-10032-1. The Decision and Order publicly reprimanded respondent, and her Nevada  
17 Medical License was revoked but the revocation stayed, and the medical license was placed on  
18 probation for a period of thirty-six months (36) based on terms and conditions which included,  
19 but are not limited to, a \$10,000 fine and reimbursement of the costs of investigation and  
20 prosecution.

21 I. The circumstances of the Nevada Board of Medical Examiners' disciplinary  
22 action are as follows: Between about November 2003 and April 2010, respondent provided  
23 treatment as a pain management physician to a male patient identified as Patient A.<sup>4</sup> Respondent  
24 treated Patient A for lower back and hip pain. Respondent's treatment included prescribing

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27 <sup>4</sup> The patient is identified as Patient A in the Consent Agreement to protect his identity.  
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1 controlled substances, primarily Norco,<sup>5</sup> for management of Patient A's pain. Patient A resided  
2 in Reno, Nevada, and until about early 2008, he travelled to respondent's offices in Las Vegas for  
3 his visits with respondent. However, between about early 2008 through about early 2010, Patient  
4 A did not make any office visits. During this period, respondent conducted telephone  
5 consultations with Patient A, and respondent "called in" prescriptions for controlled substances  
6 for Patient A to a pharmacy chosen by Patient A. Although Patient A did not make office visits  
7 during this period, respondent's chart notes for Patient A during this period indicate that Patient A  
8 was seen in person and that his vitals were taken.

9 J. On or about April 15, 2010, respondent wrote a prescription for Oxycodone<sup>6</sup> for  
10 Patient A which was filled at Walgreens Pharmacy in North Las Vegas. The Oxycodone  
11 medication was picked up by respondent's husband. Patient A had no knowledge of the  
12 prescription and, in fact, was out of the country between April 5 and May 10, 2010.

13 K. On or about January 28, 2011, the Investigative Committee of the Nevada State  
14 Board of Medical Examiners filed a Complaint in Case No. 11-10032-1 against respondent,  
15 charging respondent with, among other things, engaging in conduct intended to deceive in  
16 violation of section 630.352 of the Revised Nevada Statute, in that on April 15, 2010, while  
17 Patient A was out of the country, respondent wrote a prescription for controlled substances for  
18 him which was picked up by respondent's husband; and failing to maintain timely, legible,  
19 accurate and complete medical records related to the diagnosis, treatment and care of a patient in  
20 violation of section 630.3062(1) of the Nevada Revised Statute, in that between about early 2008  
21 through about early 2010, respondent generated false chart notes indicating Patient A made office  
22 visits and had his vitals taken when, in fact, Patient A did not make any office visits during this  
23 period.

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25 <sup>5</sup> Norco is Hydrocodone Bitartrate 10 mg and Acetaminophen 325 mg. It is a Schedule  
26 III controlled substance under Health and Safety Code section 11055(e) and a dangerous drug  
under Business and Professions Code section 4022.

27 <sup>6</sup> Oxycodone is a Schedule II controlled substance under Health and Safety Code  
28 section 11055(m) and a dangerous drug under Business and Professions Code section 4022.

1 **Disciplinary Action – New Mexico Medical Board**

2 L. On or about November 10, 2011, in a Default Decision and Order in Case No.  
3 2011-030 before the New Mexico Medical Board, respondent's New Mexico Medical License 97-  
4 149 was revoked.

5 M. The circumstances of the revocation of respondent's New Mexico Medical  
6 License are as follows: On or about December 21, 2009, in an Agreed Order in Case No. 2009-  
7 034, respondent's New Mexico Medical License No. 97-149 was placed on probation based on  
8 certain terms and conditions. Among the terms and conditions was the condition respondent  
9 provide quarterly affidavits to the New Mexico Medical Board attesting to her compliance with  
10 the terms set forth in the Agreed Order.

11 N. On about August 26, 2011, the New Mexico Medical Board filed a "Notice of  
12 Contemplated Action" (NCA) in Case No. 2011-030 against respondent. The NCA alleged  
13 respondent failed to submit the quarterly affidavits required by the Agreed Order. Additionally,  
14 the NCA alleged that respondent's Nevada Medical License was reprimanded and placed on  
15 probation in an Agreed Order issued by the Nevada State Board of Medical Examiner on January  
16 7, 2011. (See paragraph 10E, above.)

17 O. On or about September 2, 2011, the New Mexico Medical Board filed an  
18 "Amended Notice of Contemplated Action (ANCA)" reiterating the allegations in the original  
19 NCA and advised respondent that failure to respond to the ANCA and to request a hearing would  
20 lead to disciplinary action against her New Mexico License to discipline. Respondent failed to  
21 request a hearing.

22 **SECOND CAUSE FOR DISCIPLINE**

23 (Dishonesty or Corruption)

24 12. Respondent is further subject to disciplinary action under sections 2227 and  
25 2234, as defined by section 2234, subdivision (e) of the Code, in that, respondent committed an  
26 act or acts of dishonesty or corruption, as more particularly alleged hereinafter:

27 A. Paragraphs 11, above is incorporated by reference as if fully set forth herein.

28 B. Respondent failed to disclose administrative actions taken against her medical

1 licenses by other states in the application for renewal of controlled substances registration  
2 she submitted to the Nevada State Board of Pharmacy on or about October 16, 2010.

3 C. Respondent engaged in misrepresentation and provided false and misleading  
4 statements in the application for renewal of medical license she submitted to the Nevada  
5 State Board of Medical Examiners on or before May 8, 2009.

6 D. On or about April 16, 2012, respondent signed a Consent Agreement in Case  
7 No. 11-10032-1 before the Nevada Board of Medical Examiners in which she admitted that  
8 on April 15, 2010, while Patient A was out of the country, respondent wrote a prescription  
9 for Oxycodone in Patient A's name and that the prescription was filled and picked up by  
10 respondent's husband.

11 E. On or about April 16, 2012, respondent signed a Consent Agreement in Case  
12 No. 11-10032-1 before the Nevada Board of Medical Examiners in which she admitted that  
13 between about early 2008 and about early 2010, she created false chart notes indicating  
14 Patient A made office visits and had his vitals taken when, in truth and in fact, Patient A did  
15 not make office visits during this period.

16 **False and Misleading Statements in Quarterly Declarations**

17 F. Probation Condition No. 8 of the Board's Decision and Order in Case No. 09-  
18 2004-161866, required respondent to submit quarterly reports under penalty of perjury that  
19 all statements in the quarterly report "are true in every respect" and with the understanding  
20 and acknowledgment that "any misstatements, misrepresentation, or omissions of material  
21 fact may be the cause for further disciplinary action."

22 (i) On or about March 30, 2011, respondent executed a Quarterly Declaration for  
23 the January through March 2011 period. Question No. 10 in the Quarterly Declaration  
24 provided: "Have you been denied, had a license or certificate to practice a business or  
25 profession suspended, revoked, or suspended or otherwise disciplined by any other federal,  
26 state, government agency or other country?" Respondent failed to provide an answer to this  
27 question. Respondent failed to check either the "Yes" or "No" box for this question.

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1 By failing to respond to Question No. 10, respondent engaged in misrepresentation,  
2 false statements or omission of a material fact in that, respondent: (a) deliberately failed to  
3 notify the Board that on or about February 2, 2011, the Nevada State Board of Pharmacy  
4 imposed disciplinary action on her DEA Registration and her Nevada Controlled  
5 Substances Registration by cancelling her DEA Registration and placing her Nevada  
6 Controlled Substances Registration on probation for two (2) years under terms and  
7 conditions (Paragraph 11A, above); and (b) deliberately failed to notify the Board that on or  
8 about January 7, 2011, the Nevada Board of Medical Examiners imposed disciplinary  
9 action on her Nevada Medical License by publicly reprimanding respondent and placing her  
10 Nevada Medical License on probation under certain terms and conditions (Paragraph 11E,  
11 above).

12 (ii) On or about July 10, 2011, respondent executed a Quarterly Declaration for the  
13 April through June 2011 period. Respondent failed to provide an answer to  
14 Question No. 10 in the Quarterly Declaration in that she failed to check either the "Yes" or  
15 "No" box for that question. By failing to respond to Question No 10, respondent engaged  
16 in misrepresentation, false statements or omission of a material fact in that, respondent: (a)  
17 deliberately failed to notify the Board that on or about February 2, 2011, the Nevada State  
18 Board of Pharmacy imposed disciplinary action on her DEA Registration and her Nevada  
19 Controlled Substances Registration by cancelling her DEA Registration and by placing her  
20 Nevada Controlled Substances Registration on probation for two (2) years under terms and  
21 conditions (Paragraph 11A, above); and (b) deliberately failed to notify the Board that on or  
22 about January 7, 2011, the Nevada Board of Medical Examiners imposed disciplinary  
23 action on her Nevada Medical License by publicly reprimanding respondent and placing her  
24 Nevada Medical License on probation under certain terms and conditions (Paragraph 11E,  
25 above).

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1 **THIRD CAUSE FOR DISCIPLINE**

2 (False Representations)

3 13. Respondent is further subject to disciplinary action under sections 2227 and  
4 2234, as defined by section 2261, of the Code, in that respondent knowingly signed a document  
5 or document directly related to the practice of medicine which falsely represented the existence  
6 or non-existence of a state of facts, as more particularly alleged in paragraphs 11 through 12,  
7 above, which are hereby incorporated by reference and realleged as if fully set forth herein.

8 **FIRST CAUSE TO REVOKE PROBATION**

9 (Failure to Obey all Laws)

10 14. At all times after the effective date of Respondent's probation in Case No. 09-  
11 2004-161866, Condition No. 7 provided:

12 "Respondent shall obey all federal, state and local laws, all rules governing the  
13 practice of medicine in California, and remain in full compliance with any court ordered  
14 criminal probation, payments and other others."

15 15. Respondent's probation is subject to revocation in that respondent failed to  
16 comply with Condition No. 7, referenced above, in that, respondent failed to inform the Board  
17 about the restrictions on her Nevada Controlled Substances Registration imposed by Nevada State  
18 Board of Pharmacy, and failed to inform the Board about the disciplinary action taken against her  
19 Nevada Medical License by the Nevada Board Medical Examiners, as more particularly alleged  
20 in paragraph 11 through 13 above, which is hereby incorporated by reference and realleged as if  
21 fully set forth herein.

22 **SECOND CAUSE TO REVOKE PROBATION**

23 (Failure to Submit Truthful and Adequate Quarterly Reports)

24 16. At all times after the effective date of Respondent's probation in Case No. 09-  
25 2004-161866, Condition No. 8 provided:

26 "Respondent shall submit quarterly reports of compliance under penalty of perjury,  
27 on forms to be provided, to the probation monitor assigned by the Board, stating whether

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1 there has been compliance with all conditions of probation. Respondent shall submit the  
2 quarterly declaration no later than 10 calendar days after the end of the proceeding quarter.

3 17. Respondent's probation is subject to revocation because she failed to comply  
4 with Probation Condition No. 8, as follows:

5 A. Respondent failed to provide an answer to Question No. 10 in the  
6 Quarterly Declaration for the October-December 2010 period in that, she failed to  
7 check either the "Yes" or "No" box for this question.

8 B. Respondent failed to provide an answer to Question No. 10 in the  
9 Quarterly Declaration or the January-March 2011 period in that, she failed to check  
10 either the "Yes" or "No" box for this question.

11 C. Respondent failed to provide an answer to Question No. 10 in the  
12 Quarterly Declaration for the April-July 2011 period, in that, she failed to check  
13 either the "Yes" or "No" box for this question.

14 **FOURTH CAUSE FOR DISCIPLINE**

15 (General Unprofessional Conduct)

16 18. Respondent is further subject to disciplinary action for unprofessional conduct  
17 under sections 2234, as defined in section 2234 of the Code, in that respondent engaged in  
18 conduct which breaches the rules or ethical code of the medical profession, or conduct which is  
19 unbecoming a member in good standing of the medical profession, and which demonstrates an  
20 unfitness to practice medicine, as more particularly alleged hereinafter in paragraphs 11 through  
21 17, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

22 **PRAYER**

23 WHEREFORE, Complainant requests that a hearing be held on the matters herein  
24 alleged, and that following the hearing, the issue a decision:

25 1. Revoking or suspending Physician's and Surgeon's Certificate Number A63753,  
26 issued to Maryanne Phillips, M.D.;

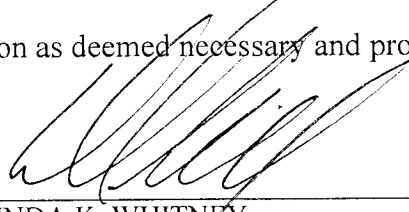
27 2. Revoking the probation previously granted respondent Maryanne Phillips, M.D., by  
28 the Board's Decision and Order in Case No. 09-2004-161866;

1           3.     Revoking, suspending or denying approval of Maryanne Phillips, M.D.'s authority to  
2 supervise physician's assistants, pursuant to section 3527 of the Code;

3           4.     Ordering Maryanne Phillips, M.D. to pay the reasonable costs of probation  
4 monitoring, and, if placed on probation, the costs of probation monitoring; and

5           5.     Taking such other and further action as deemed necessary and proper.

6  
7 DATED: July 17, 2012

  
LINDA K. WHITNEY  
Executive Director  
Medical Board of California  
State of California  
*Complainant*

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